THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18241 of 1997

Dated: 02.3.2007

Between:

K.R.Prasad

… Petitioner

AND

The Managing Director & Vice Chairman,
Girijan Cooperative Corporation Limited,
Visakhapatnam.

And another.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18241 of 1997

ORDER:

This writ petition is filed for a writ of certiorari to quash the order of respondent No.1 passed in proceedings Rc.No.3660/90-AICC dated 13.3.1996 whereby he confirmed the order dated 19.4.1995 passed by Vice Chairman and Managing Director of Girijana Co-operative Corporation Limited, Vishakapatnam, dismissing the petitioner from service.

The brief facts relevant for the purpose of this case are that the petitioner joined in the respondent Corporation as Typist-cum-Clerk and he was promoted as Senior Assistant in the year 1976. The petitioner was posted to V.Madugula during 1986-88 and 1989-90 to manage Aruku godown as Supervisor and to manage godown at S.Kota and Sunkarimetta. He was also given additional charge of V.Madugula godown for four months. On 4.6.1990 the petitioner was transferred and was asked to approach the Divisional Manager, Paderu for posting orders. Departmental proceedings were initiated against the petitioner and pending the same he was suspended on 23.6.1990 and later on 23.8.1991 he was served with a charge sheet consisting of 11 charges by the Deputy Registrar, Vigilance Officer, Girijan Cooperative Corporation Limited. After a full-fledged enquiry,

the first respondent by his proceedings Rc.No.3060/90-AICC dated 19.4.1995 dismissed the petitioner from service. The petitioner filed W.P.No.25266 of 1995 questioning the dismissal order. The said writ petition was dismissed directing the first respondent therein to dispose of the appeal filed by the petitioner. However, the appeal filed by the petitioner was dismissed by the first respondent on 13.3.1996. Questioning these proceedings, the present writ petition is filed.

A counter affidavit is filed by Sri A.Vidyasagar, Vice Chairman and Managing Director of the respondent Corporation in which it is averred that during the tenure of the petitioner at Aruku from February 1989 to June 1990 all the M.F.P.godowns at Aruku, Sunkarametta and S.Kota were under his charge. It is further stated that the petitioner embezzled huge stocks of Corporation apart from he being not prompt in attending his duties. The Manager, Branch Office, Aruku visited the godown and detected many irregularities of huge deficits in stocks and temporary cash misappropriation. On the report submitted by the Manager to the Divisional Manager, GCC Limited, Paderu and to the General Manager on 5.5.1990, listing out various lapses on the part of the petitioner, the Divisional Manager ordered for transfer of the petitioner in the interest of safeguarding the properties of the Corporation vide his proceedings dated 18.5.1990. The accounts finalized on that occasion revealed huge deficit of stocks worth Rs.2.23 lakhs. It is further alleged that the petitioner resorted to falsification of accounts and failed to account for stocks worth Rs.0.61 lakhs received from other godowns and in addition to that it was noticed that the petitioner failed to account for an amount of Rs.20,000/- received from the office in April, 1990 to incur trade charges at the godown. It is further stated that in the domestic enquiry it was proved that the petitioner caused deficit and misappropriation of

amounts to a tune of Rs.5,75,314.29 ps., on various counts. The enquiry officer after giving full opportunity to the petitioner submitted the enquiry report in which he found the petitioner guilty of charges 1 to 6, 8, 10 and 11. The second respondent, considering the enquiry report passed an order on 19.4.1995 in which he had elaborately dealt with all the charges and findings rendered by the enquiry officer. The second respondent in the said order while accepting the findings of the enquiry officer imposed on the petitioner penalty of dismissing him from the service of the Corporation, apart from ordering recovery of amount misappropriated, i.e., Rs.3.9 lakhs.

The appellate authority which considered the appeal filed by the petitioner concurred with the decision of the second respondent and dismissed the appeal vide its order dated 13.3.1996.

Sri P.Srinivasa Rao, learned counsel representing Sri P.Sri Raghuram submitted that the appellate authority has not given any reasons to dismiss the appeal and that therefore, its order is liable to be set aside. I have considered the submissions made by the learned counsel. The order of the appellate authority reads as under:

> " Sri K.Prasad while working as Senior Stores Assistant, Girijan Coop Corporation Ltd., (GPCM Society), Araku was kept under suspension for causing misappropriation of corporation funds to a tune of Rs.3.90 lakhs in the public interest vide this office proceedings Rc.No.3660/90 AIIB, dated 23.6.90.
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> After detailed enquiry, disciplinary proceedings were finalized dismissing the individual vide this office proceedings Rc.No.3660/90 AIIC dt.19.4.95. In this office final orders, the individual was provided with an opportunity for an appeal against the orders before the Board of Directors within 30 days from the date of receipt of the said final orders.
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> The individual filed an appeal vide the reference 3rd read above. The said appeal was considered by the Board of Directors at the meeting held on 24.2.1996 and rejected the same vide the resolution No.125/95-96, dated 24.2.1996."

It is no doubt true that no independent reasons are assigned by the appellate authority in dismissing the appeal. In **Girija Nandini Vs Bijendra Narayan Chaudhary**[1] the Supreme Court held that an appellate authority while confirming the order of the original authority need not give elaborate reasons. I however hasten to add that this does not mean that the appellate authority can mechanically dismiss the appeal without application of mind. The afore extracted portion of the order of the appellate authority clearly shows that the Board of Directors considered the appeal of the petitioner in its meeting held on 24.2.1996 and through its resolution No.125/95-96 dated 24.2.1996 rejected the said appeal. Unfortunately the record is not produced before this Court. In normal course the respondents would have been directed to produce the record. But considering the fact that about ten years had elapsed from the filing of the writ petition and the further fact that no one had represented the respondents during the hearing of the case, I have not chosen this course, in stead I have myself examined the charges and the findings of the disciplinary authority, namely, the second respondent. From the order of the second respondent it is clear that he has considered individual charges, explanation given by the charged employee and rendered findings in respect of each of these charges. Having regard to the detailed consideration of the matter by the disciplinary authority, it is presumed that the appellate authority would have been satisfied with all those reasons and probably for this reason no independent reasons are recorded by the appellate authority. In para-6 of the counter affidavit it is mentioned that the appellate authority, i.e., the Board of Directors have also examined all the contentions raised by the petitioner and confirmed the order of the Vice Chairman and Managing Director.

Having regard to the facts and circumstances of the case, I am satisfied that the misconduct of the petitioner is established with adequate and sufficient evidence on record. The law is well settled that in disciplinary proceedings mere preponderance of probabilities is sufficient and that proof beyond reasonable doubt is not required. It is also well settled that the Court while exercising the power of judicial review is concerned only with the decision making process and not with the merits of the decision. From the available record, I am satisfied that the respondents have not committed any illegality or procedural irregularity warranting interference of this Court under Article 226 of the Constitution of India.

For the aforementioned reasons, the writ petition fails and it is accordingly dismissed. No order as to costs.

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C.V.NAGARJUNA REDDY,J

Dt:02.3.2007
Mdaa.

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[1] AIR 1967 SC 1124